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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,903	10/12/2006	Jean-Luc Simonin	713-1275	6329
33712 7590 07/20/2010 LOWE, HAUPTMAN, HAM & BERNER, LLP (ITW) 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314				
EXAMINER HELVEY, PETER N.				
ART UNIT		PAPER NUMBER		
3782				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/599,903

Applicant(s)

SIMONIN ET AL.

Examiner

PETER HELVEY

Art Unit

3782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 15-17 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by *Ninomiya* (US 4373649).

Ninomiya discloses an assembly of a hand held tool and an attachment, the attachment comprising an anchoring base (22) attachable to a wearing article of an operator of the tool; a catch finger (30) extending from the anchoring base for hooking the tool, the catch finger including an end having an elongated cross-section (35; Fig. 7); the tool having an elongated opening through which said end of the catch finger is passable, when the tool is in a first position, for permitting the tool to be hooked onto the catch finger; wherein said end is impassable through the opening of the tool when the tool is in a second position, thereby said end preventing the tool from becoming unhooked from the catch finger (Fig. 2-7).

The limitation "after swinging down by gravity" is a process/intended use limitation and does not further define the structure of the attachment or tool but rather the process by which the tool is moved from the first position to the second position. The examiner has considered the limitation, however the device taught

by *Ninomiya* is considered to meet the scope of the claim because it discloses the two positions meeting the passable/impassable restrictions regardless of the way the tool is transitioned from the first position to the second position.

Ninomiya further discloses the catch finger comprises a groove portion between the anchoring base and said end for hooking the tool thereon after said end has passed through the opening of the tool in the first position and wherein the groove portion has a smaller cross section than that of said end of the catch finger (Fig. 7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-13, 20, and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over *Ninomiya* in view of *Kahn* (US 6641011).

Ninomiya discloses an assembly consisting of a hand-held tool and an attachment, the attachment comprising: a loop (28) configured to be threaded on to a belt of an operator, a catch finger (30) for the tool, and a locking element provided on the catch finger (35), wherein the catch finger comprises an end passable through an opening of an associated elongated shape in a handle of the tool.

Ninomiya does not expressly disclose the tool being a hand held powered tool or the tool being configured to hook on to the finger in an operating position and then to swing under its own weight into a locked position in which the locking element prevents the tool from becoming unhooked from the finger.

However, *Kahn* teaches hanging a hand held powered tool, specifically a powered fastening tool, with an elongated opening in a handle of the tool from a catch finger of a belt attached tool hanger.

The examiner notes that *Kahn* discloses a device where the tool can be lifted off the catch finger without any rotation of the tool, resulting in the tool being more easily accidentally dislodged than a tool hung on the device taught by *Ninomiya* which requires turning of the tool prior to disengagement from the hanger. The advantage of this difference is the *Ninomiya* device preventing accidental dislodging of a tool by requiring the turning motion as opposed to just the lifting motion. The examiner has taken the position that this advantage to the *Ninomiya* device would have clearly been obvious to one of ordinary skill in the art at the time of the invention.

Because *Kahn* and *Ninomiya* both teach catch finger attachments for hanging a tool from a belt, it would have been obvious to one of ordinary skill in the art to suspend the powered hand tool taught by *Kahn* instead of the non-powered hand tool taught by *Ninomiya* on the catch finger device taught by *Ninomiya* to achieve the predictable result of suspending the powered tool from a

belt, as intended by *Kahn*, with less chance of the user accidentally dislodging the tool.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ninomiya* in view of *Kahn* as applied to claims 10-12 above, and further in view of *Frank* (US 6662373).

Ninomiya as modified by *Kahn* discloses all limitations of the claim(s) as detailed above except does not expressly disclose the end of the elongated end portion being pivotable.

However, *Frank* teaches providing a rotatable elongated end section of a fastener device (12).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to provide a pivotable two part elongated end as taught by *Frank* on the catch finger end on the device taught by *Ninomiya* as modified by *Kahn*, in order to securely lock the components together until removal was desired (col. 4, ll. 55-67).

All of the component parts are known in *Frank* and *Ninomiya* as modified by *Kahn*. The only difference is the combination of all the known elements into a single device by incorporating the rotatable end section taught by *Frank* onto the end of the catch finger taught by *Ninomiya* as modified by *Kahn*.

Thus, it would have been obvious to one having ordinary skill in the art to add the rotatable end section taught by *Frank* to the catch finger end taught by *Ninomiya* as modified by *Kahn*, since the use of rotating elongated fasteners is a

well known method of preventing dislodging of components accidentally until desired.

The examiner further notes that the modification described above results in a device whereby the user must manipulate the locking portion in order to allow the tool to be removed, once the tool is rotated back to the operating position. The examiner asserts this improvement would have been obvious to one having ordinary skill in the art at the time the invention was made because the addition of the locking end prevents the user from accidentally dislodging the tool from the hanger by any movement of the tool without the user's direct manipulation of the locking element. This improvement essentially eliminates any opportunity for accidental dislodging through inadvertent movement of the tool in any direction.

6. Claims 18, 19, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ninomiya* as applied to claims 15-17 and 21 above, and further in view of *Frank*.

Ninomiya discloses all limitations of the claim(s) as detailed above except does not expressly disclose the end of the elongated end portion having a second pivotable section as claimed..

However, *Frank* teaches providing a rotatable elongated end section of a fastener device (12).

At the time of the invention, it would have been obvious to a person having ordinary skill in the art to provide a pivotable two part elongated end as taught by

Frank on the catch finger end on the device taught by *Ninomiya*, in order to securely lock the components together until removal was desired (col. 4, ll. 55-67).

All of the component parts are known in *Frank* and *Ninomiya*. The only difference is the combination of all the known elements into a single device by incorporating the rotatable end section taught by *Frank* onto the end of the catch finger taught by *Ninomiya*.

Thus, it would have been obvious to one having ordinary skill in the art to add the rotatable end section taught by *Frank* to the catch finger end taught by *Ninomiya*, since the use of rotating elongated fasteners is a well known method of preventing dislodging of components accidentally until desired.

The examiner further notes that the modification described above results in a device whereby the user must manipulate the locking portion in order to allow the tool to be removed, once the tool is rotated back to the operating position. The examiner asserts this improvement would have been obvious to one having ordinary skill in the art at the time the invention was made because the addition of the locking end prevents the user from accidentally dislodging the tool from the hanger by any movement of the tool without the user's direct manipulation of the locking element. This improvement essentially eliminates any opportunity for accidental dislodging through inadvertent movement of the tool in any direction.

The examiner notes the combination detailed above results in the first/second section positioning relationship and functional tool retaining limitations as claimed.

Response to Arguments

7. Applicant's arguments with respect to claims 10-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./
Examiner, Art Unit 3782

July 16, 2010

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/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782